

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-2166

United States of America,

Appellee,

v.

Zenaido Vasquez-Resendiz,

Appellant.

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Appeal from the United States
District Court for the
Southern District of Iowa

[UNPUBLISHED]

Submitted: November 13, 2001

Filed: November 29, 2001

Before BYE, RICHARD S. ARNOLD, and BEAM, Circuit Judges.

PER CURIAM.

Zenaido Vasquez-Resendiz pleaded guilty to being present in the United States after having been deported, in violation of 8 U.S.C. § 1326. At sentencing, he requested a downward departure from the pertinent United States Sentencing Guideline range because his deportable-alien status would preclude him from participating in various prison programs that might reduce the time he spent in prison or allow him to serve his sentence under more favorable conditions. The district court¹ denied the motion, concluding that it lacked the power to depart downward

¹The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

based on Vasquez-Resendiz's deportable-alien status. The district court determined that Vasquez-Resendiz was an aggravated felon and imposed a sentence of 46 months in prison.

On appeal, Vasquez-Resendiz argues that the district court erred in deciding that it lacked the power to depart downward based upon his deportable-alien status. We have expressly rejected the argument Vasquez-Resendiz advances here because the United States Sentencing Commission considered deportable-alien status in fixing the Guideline ranges. United States v. Cardoso-Rodriguez, 241 F.3d 613, 614 (8th Cir. 2001). We are bound by our earlier decision and we therefore affirm the judgment and sentence imposed by the district court. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.